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 Attorneys for Defendant
 7 COMPASS VISION, INC.

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

10
 11 DEBORAH WILSON

12 Plaintiff,

13 vs.

14 COMPASS VISION, INC.; and NATIONAL
 15 MEDICAL SERVICES, INC., d/b/a NMS LABS

16 Defendants.

CASE NO. **3:07-cv-03431-BZ**

**STIPULATION AND [PROPOSED]
 ORDER RE: LEAVE TO FILE THIRD
 PARTY COMPLAINT**

Crtm: G
 Judge: Hon. Bernard Zimmerman

Trial Date: November 9, 2009

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 18 WHEREAS Compass Vision, Inc. ("Compass") filed a Motion for Leave to File a Third
 19 Party Complaint against Maximus, Inc. on March 27, 2009.

20 WHEREAS the hearing for Motion for Leave to File a Third Party is currently scheduled
 21 to be heard on June 3, 2009.

22 WHEREAS during the case management conference all of the parties verbally stated that
 23 they do not oppose Compass's Motion for Leave to File a Third Party Complaint.

24 WHEREAS a true and correct copy of the Third Party Complaint is attached hereto as
 25 Exhibit "A."

26 THEREFORE, the parties, by and through their attorneys, hereby stipulate and agree that
 27 Compass's may file a Third Party Complaint against Maximus, Inc.

Gordon & Rees LLP
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1
2 Dated: _____, 2009

GORDON & REES LLP

3
4 By: _____

DION N. ZOMINOS
CATHERINE A. SALAH
Attorneys for Defendant
COMPASS VISION, INC.

5
6
7 Dated: Apr. 7, 2009

THE KANE LAW FIRM

8
9 By: _____

STEVEN S. KANE
Attorneys for Plaintiff
DEBORAH WILSON

10
11
12 Dated: _____, 2009

POMERANTZ PERLBERGER & LEWIS
LLP

13
14
15 By: _____

NORMAN PERLBERGER
Attorneys for Plaintiff
DEBORAH WILSON

16
17
18 Dated: _____, 2009

LAW OFFICES OF SAMUEL G. GRADER

19
20 By: _____

CHRISTIAN GREEN
Attorneys for Defendant
NATIONAL MEDICAL SERVICES
INC. dba NMS LABS

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Dated: _____, 2009

GORDON & REES LLP

By: _____

DION N. COMINOS
CATHERINE A. SALAH
Attorneys for Defendant
COMPASS VISION, INC.

Dated: _____, 2009

THE KANE LAW FIRM

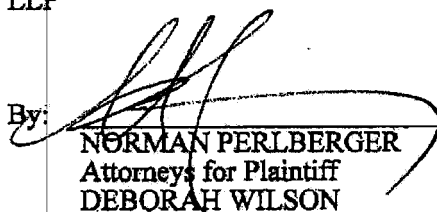
By: _____

STEVEN S. KANE
Attorneys for Plaintiff
DEBORAH WILSON

Dated: _____, 2009

POMERANTZ PERLBERGER & LEWIS
LLP

By: _____


NORMAN PERLBERGER
Attorneys for Plaintiff
DEBORAH WILSON

Dated: _____, 2009

LAW OFFICES OF SAMUEL G. GRADER

By: _____

CHRISTIAN GREEN
Attorneys for Defendant
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Dated: _____, 2009

GORDON & REES LLP

By:

DION N. COMINOS
CATHERINE A. SALAH
Attorneys for Defendant
COMPASS VISION, INC.

Dated: _____, 2009

THE KANE LAW FIRM

By:

STEVEN S. KANE
Attorneys for Plaintiff
DEBORAH WILSON

Dated: _____, 2009

POMERANTZ PERLBERGER & LEWIS
LLP

By:

NORMAN PERLBERGER
Attorneys for Plaintiff
DEBORAH WILSON

Dated: April 3, 2009

LAW OFFICES OF SAMUEL G. GRADER

By:


CHRISTIAN GREEN
Attorneys for Defendant
NATIONAL MEDICAL SERVICES
INC. dba NMS LABS

1 Dated: 4/1, 2009

PERRY, JOHNSON, ANDERSON, MILLER
& MOSKOWITZ, LLP

4 By: *David F. Beach*

5 DAVID F. BEACH
6 Attorneys for Defendant
7 NATIONAL MEDICAL SERVICES
8 INC. dba NMS LABS

8 **ORDER**

9 PURSUANT TO STIPULATION AND GOOD CAUSE APPEARING, IT IS HEREBY
10 ORDERED that Compass's Motion for Leave to File a Third Party Complaint against Maximus,
11 Inc. is GRANTED.

12 SO ORDERED.

14 Dated: April 13, 2009

15 *Bernard Zimmerman*
16 Honorable Bernard Zimmerman
17 Judge of the District Court

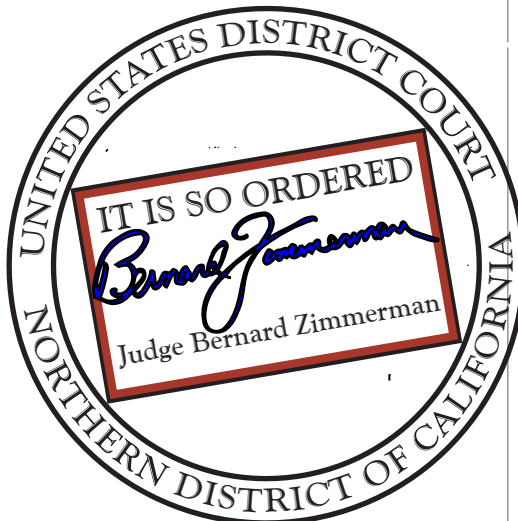


Exhibit A

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Attorneys for Defendant
COMPASS VISION, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEBORAH WILSON

Plaintiff,

vs.

COMPASS VISION, INC.; and NATIONAL
MEDICAL SERVICES, INC., d/b/a NMS LABS

Defendants.

CASE NO. C 07-03431 BZ

**DEFENDANT COMPASS VISION,
INC.'S THIRD PARTY IMPLERDER
COMPLAINT**

JURY TRIAL DEMANDED

Judge: Hon. Bernard Zimmerman
Trial Date: November 9, 2009

COMPASS VISION, INC.

Cross-Complainant,

vs.

MAXIMUS, INC.

Cross-Defendant.

Third Party Complainant COMPASS VISION, INC. ("Compass") alleges:

1. Compass is and was at all times herein a corporation incorporated in the State of Florida whose principal place of business is in Wilsonville, Oregon.

2. On information and belief, MAXIMUS, INC. ("Maximus") is and was at all times herein a corporation incorporated in the State of Virginia.

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3. The jurisdiction of the court over this subject matter is pursuant to 28 U.S.C. §1332 in that this is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs. Such jurisdiction existed at the commencement of the action.

4. Compass is informed and believes, and on that basis alleges, that, pursuant to an agreement with the California Department of Consumer Affairs ("CDA"), at all relevant times hereto Maximus served as the administrator of the CDA's Diversion Program ("Diversion Program") pursuant to RFP # 7467-01-02.

5. Compass is informed and believes, and on that basis alleges, that at all relevant times hereto Plaintiff was a participant in said Diversion Program.

6. Compass and Maximus entered into a contract with an effective date of July 1, 2003, whereby Compass agreed to perform certain third party administration in connection with the development, coordination and provision of laboratory services for participants of the Diversion Program. (See Exhibit "A," attached hereto; referred to as "Contract.") As a term and condition of this Contract set forth in Paragraph 13, Maximus agreed to indemnify, defend and hold harmless Compass from losses, costs, claims, damages, liabilities and attorney's fees which Compass may incur arising out of the negligence or willful misconduct of Maximus, its employees or agents, or a breach by Maximus of its obligations under the contract.

7. The Contract also provides that in the event that a suit is brought to enforce or interpret the Contract, the prevailing party will be entitled to recover its attorneys' fees.

8. On May 22, 2007, an action was commenced in the Northern District of California, San Francisco entitled *Deborah Wilson v. Compass Vision, Inc. et al.*, as Case Number C-07-03431 BZ. An Amended Complaint was filed on January 7, 2008. Plaintiff alleges in said Amended Complaint that, *inter alia*, Compass administered and promoted an alcohol detection test, known as "EtG," that was inaccurate and unsupported scientifically, thereby causing "false positive" results. Plaintiff claims that, as a result thereof, she sustained damages.

9. Compass denies Plaintiff's allegations. Plaintiff's Amended Complaint is incorporated herein for purposes of reference only.

FIRST CAUSE OF ACTION
(Breach of Contract)

10. Compass refers and incorporates herein by reference the allegations of paragraphs 1 through 9 as though fully stated herein.

11. The Contract includes, among other things, an agreement by Maximus to defend, indemnify and hold Compass harmless from any and all "claims, losses, liabilities or expenses (including without limitation attorneys' fees) which may arise in whole or in part, out of (i) the negligence or willful misconduct of MAXIMUS, its employees or agents, or (ii) a breach by MAXIMUS of its obligations under [the Contract]. (Exhibit "A," ¶ 13.)

12. Maximus breached the Contract in that Maximus has refused to defend, indemnify and hold harmless Compass for the claims of Plaintiff in this action.

13. Maximus has breached its Contract with Compass therefore causing damages to Compass as a result. The total amount of Compass' damages is not yet known and Compass will seek leave of Court to insert such amount at the time of trial.

SECOND CAUSE OF ACTION
(Contractual Indemnity)

14. Compass refers and incorporates herein by reference the allegations of paragraphs 1 through 13 as though fully stated herein.

15. Compass and Maximus entered into the Contract in which Compass agreed to furnish and perform various services. Under the terms of the Contract, Maximus agreed to defend, indemnify and hold harmless Compass from losses, costs, claims, damages, liabilities and attorney's fees which Compass incurs arising out of the negligence or willful misconduct of Maximus, its employees or agents, or a breach by Maximus of its obligations under the contract.

16. Compass furnished and fully performed its services as required under the Contract.

18. By virtue of the above-described Contract and applicable law, Maximus must defend, indemnify and hold Compass harmless for the amount of any judgment, settlement, claim and for expenses, costs of suit, attorney's fees, experts' fees and other damages and cost which Compass incurs in connection with this litigation as a result of any negligence, willful misconduct and/or breach of the terms of the Contract by Maximus, its employees or agents.

THIRD CAUSE OF ACTION
(Equitable Indemnity and Contribution)

22. Compass is without fault, culpability or negligence in the Plaintiff's claim, but is being required to defend itself in an action as a result of Maximus' tortious conduct. Therefore,

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1 Maximus has an equitable obligation to indemnify and hold Compass harmless from and against
2 any and all claims, losses, damages, attorneys' fees, costs, judgments and settlement expenses
3 incurred in mitigation and defense against any action or claim asserted against Compass.

4 23. Compass contends that it is entitled to proceed against Maximus for a
5 determination of the extent to which Maximus should indemnify Compass for any judgment
6 made or entered against Compass arising from any assertions of the Plaintiff in this action.

7 24. Compass further contends that if it is found liable to Plaintiff, Compass should be
8 indemnified by Maximus on the basis of a comparison of Compass' comparative fault (if any)
9 with that of Maximus, and each of them, under the principles of partial and comparative
10 indemnity.

11 25. If Compass is held liable to Plaintiff upon her Complaint, then Compass is
12 entitled to be indemnified by Maximus in whatever amounts may be adjudged, and for its costs
13 and expenses incurred in the defense of this action, including reasonable attorneys' fees. The
14 total amount of Compass' losses, damages, costs and attorney's fees is not yet known and
15 Compass will seek leave of court to insert such amount at the time of trial.

16 **FOURTH CAUSE OF ACTION**
17 **(Declaratory Relief)**

18 26. Compass refers and incorporates herein by reference the allegations of paragraphs
19 1 through 25 as though fully stated herein.

20 27. An actual controversy has arisen and now exists between Compass and Maximus
21 concerning their respective rights and duties under the Contract concerning the indemnity
22 obligations under the Contract.

23 28. On the one hand, Compass claims that Maximus is required to indemnify, defend
24 and hold harmless Compass for the claims made by Plaintiff against Compass in this action. On
25

1 the other hand, Maximus denies that it is obligated to defend, indemnify and hold harmless
2 Compass for the claims made by Plaintiff against Compass in this action.

3 29. A judicial declaration is necessary and appropriate at this time under the
4 circumstances in order that Compass may ascertain its and Maximus' rights and obligations
5 under the Contract. To date, Compass has incurred attorneys' fees, expert witness and
6 consulting fees, court costs and other costs related to Plaintiff's action against Compass. The
7 total amount of Compass' losses, damages, costs and attorney's fees is not yet known and
8 Compass will seek leave of court to insert such amount at the time of trial.

9 **WHEREFORE**, Compass prays for judgment in its favor as follows:

10 1. For a declaration of the amount that Maximus is obligated to pay Compass if
11 Compass is compelled to pay any sum as the result of any damages, judgment, or other awards
12 which are or may be recovered by Plaintiff against Compass;

13 2. For a declaration that Maximus is liable to Compass for a reasonable sum for
14 attorney's fees., expert witness and consulting fees, court costs, and all other costs incurred in
15 this action or proceeding brought against Compass by Plaintiff;

16 3. For general damages according to proof;

17 4. For reasonable attorney's fees;

18 5. For cost of suit herein; and

19 6. For such other and further relief as this Court deems just and proper.

20 Dated: March __, 2009

GORDON & REES LLP

21
22 By: /s/ Catherine A. Salah
23 CATHERINE A. SALAH
24 Attorneys for Defendant
25 COMPASS VISION, INC.
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COMPASS hereby demands trial by jury.

Dated: March __, 2009

GORDON & REES LLP

/s/ Catherine A. Salah

By:

CATHERINE A. SALAH
Attorneys for Defendant
COMPASS VISION, INC.